

**2019 Harvard Law Class Day Remarks
May 29, 2019**

The great Hasidic Rabbi Nachman of Bratslav lived in what was then the Polish-Lithuanian Commonwealth from 1772 to 1810. As you can tell from those dates, he lived a short life, and one filled with great sorrow. Rabbi Nachman had six children, four of whom died as infants, and he suffered from what would now probably be diagnosed as clinical depression. Yet during his 38 years on this earth, he offered lessons on living a meaningful life—and on the duty to find joy—that I find especially helpful in our own time. While it's customary at law school graduations to cite famous lawyers and judges, wisdom can be found in many places. So today, I would like to rely on Rabbi Nachman as a guide to the message I'd like to offer.

Let me begin with one of his stories: “Once upon a time, a king told the prime minister, ‘As an astrologer, I see that whoever eats any of the wheat that grows this year will go mad. Let us think of some solution.’ The prime minister answered, ‘Let us have some of last year’s wheat set aside for us so that we will not have to eat the tainted grain.’ The king replied, ‘But if we do that, we alone will be sane in an insane world. Then it will be as though we are the ones who are insane and the others sane.’ ‘It isn’t possible,’ the king added, ‘to set wheat aside for everyone either. So we will also have to eat the tainted wheat. But we shall make a mark on our foreheads, so that when we look at each others’ foreheads, we will know that we are both insane.’”

That story is one I have been thinking about a lot of late, since I think it says something essential about the human condition. As soon-to-be graduates of Harvard Law School, let me assure you: like the king and his prime minister in Rabbi Nachman’s story, we are all mad here. Me, you, your professors, and your future colleagues. We all have an invisible “L word”—no, not “lesbians” or “lobbyists,” but “lawyers”—inscribed on

our foreheads. It affects our outlook and twists our sense of humor. It allows us to see how the Constitution, statutes, common law, and regulations shape the lives of every American. Yes, we're insane, but at least we know it. Today, after three years of hard work, you're one of us. You can speak the secret language that lawyers use.

So what are you supposed to do now?

It would take astonishing *chutzpah* for me to tell you how to plot out the rest of your life. We all walk our own paths. There is only one thing I know for sure: nobody really knows what life has in store for them.

My late client, Edie Windsor, sure didn't. As a closeted young woman growing up in Philadelphia after World War II, she had no idea what the future held. She didn't know that she'd meet Thea Spyer and fall in love. She didn't know that Thea would eventually become a quadriplegic due to multiple sclerosis and that, after 40 years together, they would fly to Canada to marry shortly before Thea's death. And she *definitely* didn't know that when the federal government refused to recognize their marriage, she'd win a landmark victory at the Supreme Court. Even after we filed our case, Edie was still surprised by her life's path: it's one thing to be "out" as a lesbian, she once remarked, but it's another thing entirely to be the out lesbian who just happens to be suing the United States of America.

The same, of course, is true for me. As a closeted high school student in Cleveland, Ohio in the early 1980s, as a closeted college student here at Harvard in the mid 80s, or as an only slightly less closeted law student at Columbia in the late 80's, if you had told me that that one day I would marry a woman, have a child, win a civil rights case about marriage equality before the United States Supreme Court, and then start my own law firm, Kaplan Hecker & Fink, I would have responded that you were completely insane.

But while there is a lot that you can't predict or control, there is plenty that you can. So I'd like to try to offer some advice based on my own 25-year career, with the modest hope that it helps you along your own paths.

My first piece of advice is based on the most literal reading of Rabbi Nachman's story: in this crazy world, find people who also have that special mark on their forehead and stick close to them. Even a king needs a prime minister—and both of them need allies.

We tend to forget this in the legal profession; too often, we glamorize the lawyer as a lone advocate standing heroically before the court. But that image is false. I couldn't have argued and won the *Windsor* case without an amazing team of lawyers by my side who grilled me in moot courts, agonized over every word in our briefs, and cried together when we won. I wouldn't have been able to start my own law firm without the sanity, wisdom, and friendship of my current partners. Without so many other amazing women, we couldn't have founded the Time's Up Legal Defense Fund, which assists thousands of low-income survivors of sexual harassment and assault in the workplace—and which has enabled so many brave women to come forward to tell their stories. There, I look to Oprah Winfrey, who, as always, put it best: "[W]hen [a] new day finally dawns, it will be because of a lot of magnificent women . . . and some pretty phenomenal men, fighting hard to make sure . . . nobody ever has to say 'Me too' again."

In case it isn't already obvious, let me remind you that the greatest gift Harvard has given you is the other students around you this afternoon. You will accomplish far more if you find other lawyers who share your values and work with them to make things happen. If you come to realize that you're working with people who don't share your values or can't help you grow as a lawyer, then be honest with yourself—they aren't the right colleagues. Find mentors who believe in you. Who

you choose to surround yourself with speaks volumes about who you are and who you will become.

Rabbi Nachman observed that “sometimes a group of people happily dancing together take hold of someone who is standing miserable and depressed on the outside. They pull him into the dance circle despite himself, forcing him to rejoice with them.” Especially when we feel stuck on the sidelines, friends and allies can help to bring us back into the mix. Let yourself be the person who is pulled into the dance circle. And once you’re there—especially if you’ve come from outside the conventional circles of privilege—do the same for others.

That brings me to my second piece of advice from Rabbi Nachman: “If you believe that it is possible to break, believe that it is possible to repair.”

You have the distinction of graduating law school at one of the most unsettled moments in our nation’s history. To borrow from the 1963 Ethel Merman & Spencer Tracy movie which my son loved so much when he was little, it is truly a “a Mad, Mad, Mad, Mad World.”

The past several years have seen a terrifying increase in hate crimes and bigotry toward minorities of all kinds. The #MeToo movement has exposed the misogyny that infects some of our leading institutions. Our elected officials struggle to address soaring income inequality, access to affordable healthcare, an epidemic of gun violence, and the imminent threat of climate change. Whatever your politics or party, we can agree that our society has become dangerously polarized, and our politics profoundly divisive. The rule of law has taken a beating, and has never looked more tenuous. Like Rabbi Nachman, we have good reason to be depressed.

But it is far too easy to simply give up and become cynical—to decide that nothing really matters and there’s nothing we can do to fix it. As lawyers, not to mention lawyers with Harvard law degrees, you

have a duty to act. As Justice Kagan put it (citing Stan Lee's *Spiderman*, no less): "In this world, with great power there must also come great responsibility." Seek opportunities to make the world better. And when you take on clients, whether a person, a company, or a government, devote yourself to solving their problems ethically and effectively. The life of a lawyer is a life of responsibility.

Don't be passive. You have agency. Use it. So when you see a problem, don't just wait for a solution to magically present itself. Instead, ask yourself: "If not me, who? If not now, when?" Those are the questions I asked myself after white supremacists attacked Charlottesville in 2017, and it's what led me and several brave colleagues to file a lawsuit under the Ku Klux Klan Act against the perpetrators of the organized violence there. Those are the questions I asked when a town in Mississippi denied a permit to its first-ever LGBT pride parade last year, and it led to a beautiful, inspiring march for equality. And those are the questions I asked when I got a call about a woman named Edie Windsor who needed a lawyer, setting me on a path to the Supreme Court.

A few weeks ago, I had the honor of acting as the emcee—not the cool rap kind, but the nerdy lawyer kind—at a Law Day dinner in New York City. As I looked down from the podium, I was struck by the fact that while the hundreds of lawyers in that ballroom strongly disagreed on many issues of law, politics, and jurisprudence (after all, they were not only lawyers, but New Yorkers), they all shared the same belief about what it means to be a lawyer. As Second Circuit Judge Richard Sullivan noted that evening, "All lawyers—not just government lawyers, not just public defenders, and not just judges—all lawyers have an affirmative public duty to protect and defend our constitutional system of justice. That's not true of other professions, noble though they are. Doctors, accountants, architects don't take such an oath. Lawyers alone are asked to assume this public role. And so it is that lawyers do not merely represent private clients in private matters. Lawyers have an extra,

public responsibility to serve the Nation and to preserve our institutions of justice.”

This leads to my third and final piece of advice: Be brave.

As lawyers, we are temperamentally cautious, trained to see risk and avoid it. Over these past three years, you may have seen how legal reasoning can unduly complicate what is plainly right there in front of you. Lawyers are taught to switch deftly between both sides of an argument—to see every angle and to define the right outcome by reference to a limited set of considerations. This is why it’s sometimes said that lawyers have no values, that we are just hired guns. That doesn’t have to be true, and in my experience, it usually isn’t. But when principles don’t align with professional, financial, or political incentives, it’s far too easy for lawyers to over-rationalize core values into a hazy, meaningless blur.

A Harvard law degree gives you the privilege to take risks and recover from mistakes that others can’t. Resist the impulse to play it safe. Think consciously about what you are doing and why you are doing it. If you just go with the flow and let others define what happens to you, then one day you will wake up and realize that the life you’re living isn’t your own. This doesn’t necessarily require you to abandon the prestigious institutions that many of you are heading to. I built a wonderful career by climbing the ranks at my old firm, Paul Weiss. But becoming a great lawyer requires that you be courageous, press boundaries wherever you are, and insist that things can always change for the better, especially now.

If you have followed my first two pieces of advice, then you will know when the moment demands bravery and you’ll have the support that you need to act. Truth be told, it was scary to take a marriage equality case to the Supreme Court and feel the fate of so many Americans resting on my shoulders. It was scary to start a new law firm—and to decide that our very first case would be a lawsuit against two

dozen white supremacists who planned the attack in Charlottesville. In making that decision, my colleagues and I not only felt an immense responsibility for our clients, but also for each other's physical safety and security. But I knew that I would be with people who would have my back no matter what.

Your life will not always be easy. There will surely be times when you want to throw up your hands in frustration or anger. Believe me, I've had my fair share of those feelings. I know I sound like an old lady when I say this, but if you think that sexism is a big problem in the legal profession today, just imagine what it was like when I graduated law school in 1991. Not to mention the fact that I remained in the closet for both of my clerkships due to my own fear of widespread homophobia.

When you wake up tomorrow, and the next day, and the day after that, to quote Hillary Clinton, *persist*. As members of the Bar, you will be entrusted with the responsibility to protect the Constitution of the United States. The people who stand the most to lose from the battles raging around us do not have the privilege of being at this ceremony today. They need your help, now more than ever.

Rabbi Nachman taught his followers that: "All the world is a very narrow bridge. And the main thing to remember is not to fear at all." Those words are as true today as they were in Rabbi Nachman's time of pogroms and plagues. So like Edie Windsor, be brave. Be yourself and be true to yourself. As Pam Karlan—my dear friend and *Windsor* co-counsel—would say: "You cannot choreograph a lifetime." Even if you lose a case, or two, or three along the way, like I did, keep on walking across that narrow bridge with as little fear as possible. You are about to enter one of the noblest of professions. Take on clients and causes because you know in your mind and in your heart that it's the right thing to do. As far as I can tell, that is what this crazy condition of being both a human being and a lawyer is all about. And I guess I really am an old lady when I say this: we are counting on you to do so.

Thank you, Dean Manning, Dean of Students Sells, and Association President Eaton. Congratulations to the thousands of friends and family members who came from far and wide to be here for the graduates. And most of all, thank you, Harvard Law Class of 2019, for inviting me to be a part of this joyous celebration.